IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22-12-2006

CORAM

THE HON'BLE MR.JUSTICE S.ASHOK KUMAR

CRP(PD) Nos: 657, 658 and 797 of 2006

and CMP.Nos: 7528, 6382 and 6383 of 2006

...

V.N.Subramaniyam .. Petitioner in all CRPs/
2nd Defendant

Vs.

1. A.Nawab John
2. S.Muthusamy
3. S.Jaganathan
4. K.R.Natarajan
5. K.r.Murugananthan
6. Sengoda Gounder .. Respondents in all CRPs
Plaintiff 1st Defendant

For Petitioner :: Mrs.Hema Sampath
for Mr.S.Saravanan
(CRPs. 657 and 658/06)
Mr.MJP.Rajkumar (CRP.797/06)

For Respondents :: N.Manokaran for RR 1 to 5
R.6 given up

Civil Revision Petition No:657/06 is filed under Act 227 of Constitution of India against the order dated 22.1.2004, made in IA.No. 75 of 2004 in unnumbered O.S., passed by the learned Subordinate Judge, Bhavani.

Civil Revision Petition No:658/06 is filed under Act 227 of Constitution of India against the order dated 22.1.2004, made in IA.No. 76 of 2004 in unnumbered O.S., passed by the learned Subordinate Judge, Bhavani.

Civil Revision Petition No:797/06 is filed under Act 227 of Constitution of India against the order dated 31.3.2006, made in IA.No. 3 of 2006 in O.S.No.4 of 2005, passed by the learned Addl.District Judge, Fast Track Court-IV, Erode at Bhavani.

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COMMON ORDER

The revision petitioner who is a subsequent purchaser of the suit property and impleaded as the second defendant in the suit suit, has filed these revisions as against the allowing of the I.A.Nos:75 and 76 by the learned Subordinate Judge, Bhavani, which have been filed to condone the delay of 585 days and 1328 days respectively in representing the Plaint with deficit court fee and also against the dismissal of his I.A.NO.3 of 2006 filed for rejection of the Plaint, passed by the learned Additional District Judge,(Fast Track Court-IV), Bhavani.

2. Learned counsel for the revision petitioner contended that the revision petitioner who is the 2nd defendant in the suit purchased the land from Vadivelu, the power agent of the sixth respondent on 8.4.1999. The respondents/plaintiffs 1 to 5 filed a suit for specific performance against the 6th respondent/1st defendant on 20.8.1998 before the Sub Court, Bhavani based on the agreement dated 22.3.1995. The respondents/plaintiffs ought to have paid a court fee of Rs.96,603/= for the relief sought for. But they paid only Rs.2000/= and on 24.8.1998 the Plaint was returned for certain defects, including the deficit court fee. For compliance of the same, three weeks time was granted. But the plaint was represented only on 3.5.2002 with a petition u/s.148 and 151 CPC to condone the delay of 1328 days. Again the plaint was returned on 3.6.2002 for non compliance of the earlier queries and also the deficit court fee. Again two weeks time was granted for rectifying the defects. But the Plaint was represented only on 22.1.2004 with a petition under Section 148 and 151 CPC to condone the delay of 585 days in representation and the two I.A.Nos:75 and76 of 2004 were allowed on 22.1.2004. The plaint was returned on the same ay ie.., on 22.1.2004 due to some defects and two weeks time was given to comply with the defects. But the plaintiffs represented the Plaint only on 9.4.2004 with a petition to condone the delay of 70 days before the District Court, Erode due to pecuniary jurisdiction and the suit was numbered as O.S.No.100 of 2004. The sixth respondent was set ex parte. The petitioner, on his petition was impleaded by orders dated 9.3.2005 in I.A.No.1532 of 2004. According to the revision petitioner, the plaintiffs failed to invoke Section 149 CPC to enlarge the time for payment of deficit court fee. Hence the plaint filed by the respondents 1 to 5 in O.S.No.4 of 2005 is liable to be rejected.

3. Learned counsel for the the respondents/plaintiffs contended that the suit was originally filed and numbered only against the sixth respondent Sengoda Gounder. As the sixth respondent did not file any written statement, he was set ex

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parte and the case was posted for ex parte evidence on 5.10.2004. At that time only, the revision petitioner has filed the I.A., for his impleadment since he purchased the suit property on 8.3.1999 and he has no locus standi to raise any objection to the condonation of the delay. Further the plaintiffs did not have the knowledge of the purchase by the revision petitioner and the purchase is not binding on them. The alleged sale by the revision petitioner is only a sham and nominal transaction. The plaintiffs have entered into agreement with the 6th respondent on 22.3.1995 for a sum of Rs.13,31,663/= for sale of the suit property and they have made several payments. After paying the deficit court fees by taking out condonation applications, the delay was excused and the plaint was numbered by the District Court due to pecuniary jurisdiction as O.S.No:100 of 2004 and transferred to the file of the Addl.District Court (FTC-IV), Bhavani and renumbered as O.S.No: 4 of 2005. The revision petitioner was not a party to such applications as he had been impleaded only subsequently. As the payment of court fee is a matter between the court and the plaintiffs, the revision petitioner has no locus standi to question the same. Even the present CRPs are not maintainable either under Art.227 of the Constitution of India or under Section 115 CPC.

4. Learned counsel for the respondents/plaintiffs also contended that Section 26 CPC only stipulates that the Plaint should be "duly presented" and therefore the presentation of the Plaint cannot be invalidated for payment of full court fee. Otherwise, most of the suits will be rejected at the threshold for incomplete presentation. He also contended that the suit is fro specific performance or in the alternative for refund of advance amount. The plaintiff is having limitation to file a fresh suit for refund of advance amount upto the year 2010, whereas he has already prayed for the relief of refund of advance amount, whileso, there is no need for filing separate petition under Section 149 CPC when he has time to file the suit itself. Section 55(6)(b) o the Transfer of Property Act enables the plaintiffs to file the suit within a period of 12 years as held in AIR 2000 SC 573. Further, the purchase by the revision petitioner is hit by lis pendense and his title is not valid in law as per Section 52 of the T.P.Act.

5. Learned counsel for the respondents further contended that Section 149 by using the word "may" and "at any stage" widens the scope and discretionary power of the court and thus a liberal view in regard to the power of the court under this section has to be taken. The discretion cannot be refused to be exercised because the application is labelled under a wrong Section. If the suit has not been properly valued, the court is bound to grant time for payemnt of the deficiency under Orer 7 Rule 11 (c.) CPC. A Plaint cannot be rejected under Order 7 Rule 11 (c.) for being insufficiently stamped, unless the

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plaintiff is first called upon to supply the deficiency within a specified time and unless the plaintiffs fails to do so within such time. Order 7 rule 11 comes into play only when the plaintiff refused to pay the balance court fee even after the defect has been pointed out, and the court cannot straight away reject the plaint. According to the learned counsel, when a party prays condonation of delay in representation duly complying with the return endorsement, and has not asked the court to extent the time to pay the court fees, but the court nevertheless admits the suit and receives the fee, the only reasonable interpretation is the court has implicitly though not explicitly, extended the time and it can do within the meaning of Section 149 even though the petition has been filed under Section 151 CPC. He also contended that the laws of procedure are only meant to regulate effectively, assist and aid the object of doing substantial and real justice and an act of court shall not prejudice or foreclose even an adjudication on merits of substantial rights of citizens. Procedural law shall always been viewed as the handmaid of justice and shall not meant to hamper the cause of justice or sanctify miscarriage of justice and technical objections which dent to be stumbling blocks to defeat the deny substantial and effective justice should be strictly viewed for being discouraged except where the mandate of law inevitably necessitates its.

6. However, the Learned counsel for the revision petitioner contended that on two occasions I.A., were filed only under Sections 148 and 151 CPC to condone the delay of representation alone and there was no separate application or prayer for condoning the delay of payment of deficit court fee and thus there is no prior permission obtained to pay the deficit court fee.

7. A perusal of the impugned orders and the typed set of papers would clearly show that the delay condonation applications have not been field under Section 149 CPC or a separate prayer has been included to pay the deficit court fee with such delay. In fact the said applications have been filed under Sections 148 and 151 CPC to condone the delay of representation alone. The decisions in Padmidikkala Sitharamayya and others Vs. Ivaturi Ramayya and another (1938 MLJ 515 DB) and S.V.Arjunaraja Vs. P.Vasantha (2005 (5) CTC 401, this court held that in the absence of specific application invoking Section 149 CPC and in the absence of any order passed by the court granting time for payment or enlargement, the plaintiff is not protected and the suit is liable to be rejected. It is also held that mechanical return of the plaint, which cannot be said that n order has been passed, extending the time for payment of court fees, would save the limitation, if the court fees is paid, after the period of limitation prescribed is lapsed.

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8. Apart from that sufficient cause was not shown in the two affidavits filed in support of the applications to condone the delay of representation. In I.A.No.76/2004 the reason given was that due to non availability of stamp paper, proper court fee could not be paid. In I.A.No:75/2004 no reason has been stated for such deficit court fee. Even for the delay also the conventional reason of jaundice has been stated and the plaintiffs alleged that they have been taking Siddha treatment for such ailment. Even such affidavits have been filed only by the counsels and not by the parties. But accepting such reasons, the delay in representation as well as the payment of deficit court fee has been accepted by the court below.

9. Further, no notice was given to the contesting defendant before condoning the delay of re-presentation. In K.Natarajan Vs. P.K.Rajasekaran reported in 2003 (2) MLJ 305 DB, this court clearly indicated that the notice must go to the defendant if the court fee is paid after the period of limitation. In the case on hand, the suit was filed on 21.8.1998. Even assuming that the limitation started to run only on that date, part court fee was paid only on 3.5.2002, after nearly 4 years and as per Art.54 of the Limitation Act, suit could be filed only within three years. If the dictum laid down in the above case is to be applied, then notice had to be issued to the defendant, but admittedly no notice was issued to the defendant. In fact no order was passed on 3.5.2002 namely on the date of deficit court fee, but only on 22.1.2004 the delay has been condoned. In fact the delay of 1328 days had not been condoned when the plaint was represented on 3.5.2002.

10. As regards pecuniary jurisdiction, the court below erroneously allowed the two Interlocutory Applications on 22.1.2004 since the City Civil Courts and Chennai City Civil Court Amendment Act, 2003 and Tamil Nadu Act 1 of 2004 came into force even as on 8.1.2004. Thus on and from 8.1.2004 the Subordinate Court, Bhaveni is ousted from the pecuniary jurisdiction to try a suit for the value of Rs.13,31,663/= and it is an abuse of process of law.

11. The question of non payment of proper court fee can be raised even at the stage of trial or in the appellate stage. The argument of the learned counsel for the respondents that the revision petitioner has no locus standi as he was only a subsequent purchaser and impleaded in the suit is fallacious. Because, the revision petitioner obtained leave of this court to file the two CRPs by order dated 13.4.2006 in CMP.Nos: 17477 and 18077 of 2005. In Janaswami Venkataseshamma Vs. Sri Prativadi Bhayankaram Ranganayakamma reported in 1950 (I) MLJ 79 (DB), this court held that when the delay is executed without notice to other side, the other side would be at

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liberty at a subsequent stage or even at the hearing of the appeal to contend that the delay should not have been excused. This would support the revision petitioner's contention that though he was impleaded as defendant at a later stage, he can question the illegality of the orders in I.A.Nos.75 and 76 of 2004.

12. Further, the relief under Section 149 CPC is a discretionary power of the Court to be exercised in a manner known to law. Suppose if a bona fide mistake is crept in, say for instance the plaintiff wrongly valued the suit under a particular provision or where something happened beyond his control, for example, robbery or non availability of stamps, then the court will be more in favour of granting time to the plaintiff to pay deficit court fee. But at the same time, if the plaintiff so acted (a) to harass the defendant, (b) did it expecting a compromise or awaiting result of some litigation or (c) because of contumacy or male fides on his part, courts will not exercise its jurisdiction in his favour. By and large, the position is, the Court must be satisfied about the bona fide mistake or some happenings beyond his control as has been laid down by a Division Bench of this Court in 2003 (2) MLJ 305 (K.Natarajan Vs. P.K.Rajasekaran). But in the present case though once it was alleged that there was non availability of sufficient stamp paper, but on the other occasions when the plaint was represented with deficit court fee, even such a plea has not been raised. But the court has without appreciating the bona fides of the plaintiffs allowed the Interlocutory Applications. In AIR 1995 SC 1945 (Buta Singh Vs. Union of India) the Hon'ble Supreme Court held that the aid of Section 149 could be taken only when the party was not able to pay the court fee in circumstances beyond control and under unavoidable circumstances and the court would be justified in appropriate cases to exercise the discretionary powers under Section 149 CPC after giving due notice to the affected party and it is not an automatic relief on mere asking.

13. As regards the maintainability of these CRPs 657 and 658 of 2006 which are filed under Art.227 of the Constitution of India, as held in 2003 (2) MLJ 205 DB, referred to supra, the defendant could file a revision under Art.227 especially when there is a failure to exercise judicial discretion in a manner known to law. CRP.No.797/2006 has been filed under Section 115 CPC as the refusal to reject the Plaint would come under proviso (a) and (b) of Section 115 CPC and hence these revisions are maintainable.

14. As regards invocation of Section 151 PC instead of 149 CPC, it is to be held that only in the absence of any specific provision, the inherent provision of Section 151 can be invoked as has been held in Muthulingam Vs. Gangai Ammal reported in 2001 (2) L.W. 347. Thus, in the present case the plaintiffs

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could have invoked Sec.149 CPC as well to condone the delay in in paying the deficit court fee while representing the Plaint.

15. As regards the locus standi of the revision petitioner to question the orders passed in the Interlocutory Applications, before his impleadment in view of Or.1 R 10(5) read with Section 21 of the Limitation Act, it is to be stated that pursuant to the devolution of interest to him from the first defendant pendente lite on his purchase Section 21(2) of the Limitation Act only will apply to this case and Section 21 (1) will not be applicable and therefore the revision petitioner is entitled to challenge as though he was a party from the date of the suit. This proposition of law is fortified in the judgement of the Hon'ble Supreme court in Velamuri Venkata Sivaprasad Vs. Kothuri Venkateshwaralu and others, reported in AIR 2000 SC 434.

16. Under these reasons since there is no invocation of the specific provision of Section 149 CPC and consequential prayer to condone the delay in payment of the deficit court fee while representing the Plaint, the Subordinate Judge has erred in allowing the I.A.Nos:75 and 76 of 2004 by exercising the discretion without analysing the bona fides of the plaintiffs case and without giving notice to the defendant. Accordingly, the CRP Nos:657 and 658 of 2006 are allowed. Consequently, CRP.No:797 of 2006 is also allowed which is a revision filed against the dismissal of the application filed for rejection of the plaint.

17. In the result, all the three CRPs are allowed. The numbering of the suit No.100 of 2004 by the District Court, Erode and renumbering the same as O.S.No:4 of 2005 on its transfer by the Additional District Judge (FTC-IV), Erode at Bhavani is set aside and consequently the trial Corut is directed to struck off the said suit from its file.

gkv

Sd/
Asst.Registrar

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Sub Asst.Registrar

Copy to:

1. The Addl.District Judge
FTC-IV, Bhavani
Erode District,

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2. The Subordinate Judge,
Bhavani

+ 1 cc to Mr.S. Saravanan, Advocate, SR No.64899

+ 3 ccs to Mr.N. Manokaran, Advocate,
SR No.65099, 65103 & 65098

NG(CO)
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